**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

(Chapter VIII, Rule 32(2) (b)

Description of Case

**Writ Petition No. 317 of 2002 (S/S)**
**(Old No. 2631/95)**

Date of decision : 11th June, 2007

A.F.R. (Approved for Reporting)

---

~~Not approved for reporting~~

Date : 11.06.2007 Initials of Judge

Note : Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

**HIGH COURT OF UTTARAKHAND, AT NAINITAL**

**Writ Petition No. 317 of 2002 (S/S)**
**(Old No. 2631/95)**

Govind Singh Bisht aged about 45 years
S/o Sri Uttam Singh
R/o Quarter No. 2, Ganga Setu Colony,
Belwala, Chaudi Ghat, Haridwar ...Petitioner

**Versus**

1. The State of U.P. through the Engineer-in-Chief, P.W.D., U.P., Lucknow

2. The Superintending Engineer
32, Circle, P.W.D., Works Department, Saharanpur

3. Works Superintendent,
P.W.D., Haridwar

4. The Branch Manager
Bridge Construction Unit
Bridge Corporation, Haridwar

5. Sri B.B. Agarwal, Vice Chairman
Public Service Tribunal,
Indira Bhawan, Lucknow

6. U.P. Public Service Tribunal,
Indira Bhawan, Luckow ... Respondents

Mr. P.C. Jhingan, learned counsel with Mr. P.S. Rawat, learned counsel for the petitioner.
Mr. Subhash Upadhyaya, learned Brief Holder for the respondents**.**

**Coram : Hon'ble Rajeev Gupta, C.J.**
**Hon'ble J.C.S. Rawat, J.**

**JUDGMENT**

**Per Hon'ble J.C.S. Rawat, J.**

**1.** By means of this Writ Petition, moved under Article 226 of the Constitution of India, the petitioner has sought the following reliefs :-

"i) to issue a writ, order or direction in the nature of Certiorari quashing the Annexures No. 2, 5, and 6 of the writ petition treating the petitioner in continuous in service of the opposite parties on the post of Works Supervisor and requlrised him on the very post of Works Supervisor as mentioned in Annexure No.1 and pay the entire amount of difference on the aforesaid post alongwith 18% interest and consequential service benefits of seniority etc.;

ii) to issue a writ, order or direction in the nature of Prohibition declaring that the Vice-Chairman and his accompanying members have no legal and valid title in the office of U.P. Public Services Tribunal and the order passed by the Tribunal is ab-initio void and non-est and the same be quashed;

iii) to issue a writ, order or direction in the nature of quo warranto to prevent the vice-Chairman-Sri B.B. Agarwal from holding the post of Chairman without any authority;

iv) to issue any other writ, order or direction which this Hon'ble Court deems just and proper in the circumstances of the case;

v) to allow the writ petition with costs."

**2.** Brief facts for the disposal of this petition are that the petitioner was appointed on 01.08.1972 as Works Agent in P.W.D. in a clear vacancy. Thereafter, on formation of Bridge Corporation on 01.03.1973, the petitioner was directed to perform the duties as Works Agent in the said Corporation. Subsequently, he was promoted as Works Supervisor on 01.08.1977 by the P.W.D., the parent department. Thereafter, a proposal was forwarded for creation of the post

of Works Supervisor on 13.09.1982. The respondent No.2, Superintending Engineer, Saharanpur regularized the services of the petitioner as Works Agent w.e.f. 12.12.1984. It was further pleaded that the petitioner has been continuously performing the duties as Works Supervisor since 01.08.1977 and he has been getting the salary for the same post. The respondent No. 2 vide order dated 06.08.1986 refixed his pay as Works Agent and a recovery of Rs. 1,021.10 was issued against the petitioner. The petitioner has further pleaded that he has been promoted on the post of Works Supervisor and his regularization on the post of Works Agents was illegal. The reversion of the petitioner from the post of Supervisor to Works Agent was against the principle of natural justice and the petitioner was given no opportunity of hearing while reverting him from the post of Works supervisor to the post of Works Agent. It was further pleaded that the petitioner had been working as Works Supervisor since 1977. The post of Works Agent and Works Supervisor were created on 11.01.1983 on the recommendation of the Senior Engineer for the appointment of the petitioner as Works Supervisor. He should have been requlalarized as Works Supervisor instead of Works Agent. The petitioner filed a claim petition before the Public Services Tribunal to quash the order dated 18.01.1985, 06.08.1984 and 28.08.1986 by which the petitioner was regularized as Works Agent and further the recovery of the amount which was wrongly fixed by the department. The Tribunal after hearing the parties, partly allowed the petition and the order dated 28.08.1986 was quashed by which recovery of Rs. 1,021.10 was ordered by the department. The Tribunal further directed that the amount which has already been recovered from the petitioner may be refunded to him. The

respondents were further directed that the said amount can only be deducted after giving the petitioner due opportunity of hearing. For the rest of the claims, the Tribunal has not granted any relief. Feeling aggrieved by the said order, the petitioner has preferred this petition.

**3.** The respondents have filed the counter affidavit before this court in which it was pleaded that the petitioner was employed as Works Charge Employee purely on the temporary basis w.e.f. 01.08.1972 for a limited period and thereafter his term was extended from time to time. The petitioner was never promoted to the post of Works Supervisor and he was appointed as regular Works Agent on 12.12.1984 and his services were regularized as such. He was appointed as Works supervisor vide order dated 18.01.1985. It was further pleaded that the petitioner applied for the post of Works Supervisor during the work charge employee but his request was not acceded and he was not promoted to the post of Work Supervisor.

**4.** We have heard learned counsel for the parties and perused the record.

**5.** Learned counsel for the petitioner contended that the petitioner had joined as Works Charge Employee in the Office of the respondents. The petitioner had been working in the post of Works Supervisor since 1977 and the post of Works Supervisor was sanctioned by the Chief Engineer in the year 1983 and he was eligible to be requlalrized to the post of Works Supervisor in the year 1983. It was further contended that the learned Tribunal has erred in ignoring the documents submitted by the petitioner alongwith Claim Petition and the

Tribunal further erred in disallowing the main prayer of the petitioner. It was further contended that Senior Engineer of the department sent a proposal forwarding the name of the petitioner for sanction of the post of Works Supervisor on 13.09.1982 and the said proposal was accepted and a post of Works Supervisor and a post of Works Agent was sanctioned vide letter dated 11.01.1983. The petitioner should have been regularized on the post of Works Supervisor instead of Works Agent from the date he was promoted as Works Supervisor. It was further contended that regularization on the post of Works Agent amounts his reversion from the post of Works Supervisor to Works Agent. Sri Subhash Upadhyaya, Brief Holder contended that the petitioner was never promoted to the post of the Works Supervisor. He was temporary appointed as Works Charge Employee on daily wages and after receiving the letter of the Chief Engineer sanctioning the post of Works Supervisor and Works Agent, the petitioner was regularized on the post of Works Agent w.e.f. 12.12.1984 vide order dated 18.01.1985.

**6.** It is admitted case of the parties that the petitioner was appointed as Works Charge Employee in the office of the respondents on daily wages basis. It is also admitted to the parties that the post of Works Supervisor is a promotional post and the feeding cadre for the post of Works Supervisor is the works Agent. Shri P.C. Jhingan, learned counsel for the petitioner could not demonstrate us that the petitioner was ever promoted by a valid promotion order from the post of Works Agent to the post of Works Supervisor and he was ever regularized on any of the post which he was holding before he was regularized on 18.01.1985 as Works Agent. It is also admitted to the parties that the petitioner was never

regularized as Works Agent before the order of regularization of the petitioner on the post of Works Agent was passed on 18.01.1985. The petitioner was never holding any regular post as Works Agent before his regularization as such and if he was never regularized as Works Agent he was not entitled to be promoted on the regular post of Works Supervisor and he cannot claim that directly he should be regularized on the post of the Works Supervisor.

**7.** Apart from this, it is admitted to the learned counsel for the petitioner that the petitioner was holding the post of Works Agent as well as the promotional post of Works Supervisor on daily wages till the writ petitioner was regularized as Works Agent. It is settled position of law that before seeking regularization on any post, the petitioner must show that he had a legal right under the statute or the rule to enforce it. The petitioner has no legal enforceable right under the statute to be regularized even though he had worked for a long period. Learned counsel for the petitioner could not demonstrate us that the petitioner was ever promoted by any order of promotion by competent authority. The petitioner has not filed any order of the promotion from Works Agent to the post of Works Supervisor in the writ petition. In absence of any such order, it cannot be held that the petitioner was ever promoted as Works Supervisor in the establishment of the respondents. Therefore, we do not find any infirmity in the judgment of the Tribunal in arriving to the conclusion that the petitioner has no right to claim the regularization on the post of Works Supervisor. The respondents has rightly regularized the petitioner on the post of Works Agent w.e.f. 12.12.1984.

**8.** The learned counsel for the petitioner emphasized that the petitioner was continuously shown as Works Supervisor by the respondents throughout from the year 1981 to 1984. It was contended that he has been performing the duties as such. The petitioner has sought quashment of the order of the Public Services Tribunal by which the Tribunal has refused to regularize the services of the petitioner on the post of Works Supervisor. The petitioner has further sought in same relief to direct the respondents to regularize him on the post of Works Supervisor. In substance, the petitioner is seeking mandamus to regularize his services on the post of Works Supervisor after quashing the order of the Tribunal. Assuming that he had been working as Works Supervisor as a daily wager, the question arise as to whether he can claim the regularization on the said post. When the Court is approached for relief by way of a writ, the court has to ask itself whether the petitioner had any legal right to be enforced. The petitioner has to prove existence of legal right in his favour. It is for the petitioner to establish a corresponding legal duty of the respondents to continue to be employed. With a view of establish his legal rights to enable the Court to issue writ of mandamus the petitioner is obligated to establish that appointments had been made upon following the constitutional scheme adumbrated in Article 14 and 16 of the Constitution of India. In the case in hand, the petitioner was appointed as daily wager and he has not been able to show that any advertisement had been issued inviting applications from eligible candidates to fill up the said post. If he was promoted there is nothing to show that any promotion committee was held and the other eligible employees were considered for the said post. The petitioner is claiming his regularization on the post of Works Supervisor

on the basis of his long services on the post of Works Supervisor. **The Hon'ble Apex Court** in the case of **Secretary, State of Karnataka and others Vs. Umadevi and others** reported in **(2006) 4 SCC p/1** has held in para Nos. 43 and 45 as under :-

> *"43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees who se period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment*

*itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim direction, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.*

*44. .....*

***45.*** *While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain-not at arm's length-since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not*

*enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution."*

**9.** In view of the above, it is apparent that the petitioner was never legally promoted as Works Supervisor. Assuming that the petitioner has been working as Works Supervisor even then he has no right to claim regularization as Works Supervisor.

**10.** Learned counsel for the petitioner did not press the relief No.ii sought in the petition for issuing a direction in the

nature of prohibition declaring that the vice-Chairman and his accompanying members have no legal and valid title in the office of U.P. Public Services Tribunal. Learned counsel for the petitioner has also not pressed the relief No.iii sought in the petition for issuing a direction in the nature of quo-warranto to prevent the Vice-Chairman Sri B.B. Agarwal from holding the post of Chairman. As a matter of fact, the petitioner has filed the claim petition before the Tribunal in the year 1986 and Shri B.B. Agarwal, Vice-Chairman, Public Services Tribunal has already been retired after completing his tenure, therefore, at this stage there is no question of issuing a direction in the nature of quo-warranto to prevent the Vice-Chairman-Sri B.B. Agarwal from holding the post of Chairman.

**11.** For the foregoing reasons, we do not find any infirmity in the said orders passed by the authority concerned. The learned Tribunal was justified in holding that the order of the respondents was in accordance with law.

**12.** The Writ Petition devoids of merit & is liable to be dismissed and is dismissed accordingly.

**13.** No order as to costs.

**(J.C.S.Rawat, J.)** **(Rajeev Gupta, C.J.)**

Dated 11th June, 2007
**Shiv**